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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

REGINALD DODSON,

Defendant and Appellant.

B175592

(Los Angeles County
Super. Ct. No. TA072991)

APPEAL from an order of the Superior Court of Los Angeles County.

Allen J. Webster, Judge. Reversed and remanded to strike convictions, otherwise affirmed.

William Flenniken, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc E. Turchin, Supervising Deputy Attorney General, and David A. Wildman, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Reginald Dodson asks this court to strike four prior convictions that were not disposed of as part of his plea bargain. The Attorney General agrees that the four prior conviction allegations and another serious prior felony allegation were implicitly presumed found to be not true but argues it is unnecessary for this court to strike them. We conclude that the implicitly stricken allegations should be explicitly stricken.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The robbery

The transcript of the preliminary hearing indicates that defendant robbed a man on December 31, 2003. Defendant displayed what looked like a handgun; the victim requested to keep \$20, which defendant allowed him to do.

Three days later, the victim identified defendant, whom he had seen once before, in a photographic six-pack. The victim also identified defendant at the preliminary hearing. When arrested, defendant possessed a plastic replica of a silver semiautomatic handgun, which was identified by the victim.

The information

The information charged one count of robbery in violation of Penal Code section 211. In addition, the information alleged two prior “strike” convictions (Pen. Code, § 1170.12, subd. (a) through (d) and § 667, subd. (b) through (i)), one of which (a 1984 robbery, A629054) defendant admitted in his plea and to which there is no contest on appeal. The second “strike” conviction, alleged as a 1998 robbery conviction (TA050234), was struck on the People’s motion a month before the plea.

Both the 1984 and the 1998 robbery priors were also alleged as “serious felonies” within the meaning of Penal Code section 667, subdivision (a)(1). Moreover, both robbery priors as well as two additional prior convictions were alleged as “prison priors” within the meaning of Penal Code section 667.5, subdivision (b).¹

¹ It is these four prison priors that appellant asks this court to strike. Respondent argues that the four one-year prior prison term allegations and the prior serious felony

The plea

On March 5, March 19, April 2, and April 5, defendant rejected the People's offer of six years in prison. Transferred to a trial court, the plea was taken April 5, 2004. Appellant was told he faced an exposure of 17 years in prison on his new case and two on his old case. The People offered a six-year sentence, two times the minimum of three years. Asked to strike the 1984 strike prior so that appellant could receive a 4-year sentence, the court declined.² Defendant then tried unsuccessfully to bargain for five years and asked to go to trial, saying he had not committed the crime. After a recess, defendant agreed to take the six years.

Defendant pleaded no contest to the sole count of robbery and admitted the 1984 strike prior, another robbery, in return for a total of six years, calculated as double the midterm of three years. The court agreed to terminate defendant's probation in another matter. After the plea was taken and the court told him "It's a good deal," defendant replied "Yeah. It's a good deal for somebody that did it."

Within two days after entry of the plea, defendant contacted his attorney asking to withdraw the plea. The matter was put on calendar and heard on April 21, 2004, with defendant arguing "he cannot see himself doing six years for something he didn't do." In denying the motion to withdraw the plea, the court made a finding that defendant knew what he was doing, that his lawyer spent considerable time discussing the pros and cons of the plea, as did the court. This appeal follows.

were all by inference "found 'not true' in accordance with the plea bargain" and that it is therefore "unnecessary" for this court to strike those priors.

² The court also explained that it could not change the charge, as requested by defendant, to a grand theft person for four years or low-term on the robbery doubled for four years.

CONTENTION ON APPEAL

The sole contention on appeal is that the trial court should have stricken the prior prison term sentence enhancement allegations. Respondent does not contest the applicability of those priors or the 1998 robbery alleged as a serious felony but argues that on a silent record it is presumed that the court found the remaining prior conviction and prior prison term allegations to be not true and it is therefore unnecessary for this court to strike the allegations.

DISCUSSION

The prior convictions not found true should be stricken.

As our Supreme Court stated in *In re Candelario* (1970) 3 Cal.3d 702, 706, “Reference to the prior conviction must be included in the pronouncement of judgment for if the record is silent in that regard, in the absence of evidence to the contrary, it may be inferred that the omission was an act of leniency by the trial court. In such circumstances the silence operates as a finding that the prior conviction was not true. [Citation.]” (Accord *People v. Chambers* (2002) 104 Cal.App.4th 1047, 1050 [citing *Candelario* but finding the oral pronouncement of judgment was not silent and spoke to “affirm the truth of the use of a firearm allegation”]; see also *People v. Clair* (1992) 2 Cal.4th 629, 691, fn. 17 [implied finding where court imposed enhancement expressly for the underlying prior conviction].)

In the case at bench, the trial court was silent as to all but one of the prior conviction allegations, not as an act of leniency or because the priors were inadvertently overlooked but because the plea bargain implicitly used only one of the “strike” priors to double the sentence, as agreed to by the court, defendant, and the prosecutor. Appellant contends that the alleged prior conviction allegations not used in sentencing him as part of his plea bargain were at least implicitly considered stricken in the plea agreement and should be stricken as part of the sentencing procedure. Respondent agrees that “It appears the intention of the parties and of the trial court was to strike the remaining allegations pursuant to the plea bargain” and the priors were implicitly stricken but

argues that “it is unnecessary for this Court to strike the remaining priors, which it is presumed the trial court found ‘not true’ in accordance with the plea bargain.”

Appellant has the better argument. If the priors were “implicitly” stricken, clarity of the record prefers they be explicitly stricken as well. We shall reverse and remand for the purpose of striking those prior allegations and shall in all other respects affirm the judgment of conviction.

DISPOSITION

The case is reversed and remanded with instructions to the trial court to strike the relevant allegations consistent with this opinion. In all other respects, the judgment is affirmed.

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COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.